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NOTES.

THE UNIFORM PARTNERSHIP ACT—NEW YORK'S FAILURE TO ADOPT IT.—The Uniform Partnership Act was not adopted by the New York legislature at its 1918 session. A bill embodying the uniform law passed the senate, was favorably reported to the assembly by its judiciary committee, and advanced to third reading, but on the closing day of the session was recommitted to the committee.[1] It is understood that the bill's failure was the result more of the rather natural absence of general interest in a bill dealing with a narrow branch of private law than of strong or reasoned opposition. That the law was not adopted in New York is a matter for regret.

[1]N. Y. Legislative Record and Index, Jan. 2-Apr. 13, 1918, pp. 7 (# 36), 263 (# 1110).

The plan of embodying the law of partnership in a uniform statute was projected by the Commissioners on Uniform State Laws in 1902 and its committee on commercial law was instructed to present a draft.[2] Eight printed drafts, prepared between 1903 and 1914, were the result of the labors of the committee and its several draftsmen. The *first*[3] and *second*[4] were the work of the late James Barr Ames.[5] The two drafts are identical except for a few interpolations. The British Partnership Act, 1890, was followed almost literally. Only seventeen departures from the language of that statute are noted by Mr. Ames in his annotations to the *second* draft. Of these, moreover, only three were of major importance.[6] One or the other of these drafts was before the committee on commercial law during 1906, 1907 and 1908.[7] Although in 1908 the draftsman expressed to the conference a doubt as to the feasibility of proceding with these drafts without modification to meet the difficulties suggested because of the definition of a corporation in the constitutions of several states,[8] the *second* draft was presented by the committee on commercial law to the commissoners at the 1909 conference,[9] but no action was taken. After the death of Mr. Ames, William Draper

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[2]25 Am. Bar Ass'n. Rep. 477 (1902); 26 *id.* 501 (1903).

[3]A broad-margined pamphlet of 24 pages, entitled on its cover "Draft of an Act to Make Uniform the Law of Partnership." This draft is reprinted in Proc. Conf. C. U. S. L., Aug. 22-25, 1906, pp. 236-256, 30 Am. Bar Ass'n. Rep. 440-459. It contains no notes or explanations. It is undated, but was prepared and printed prior to the meeting of the commissioners in August, 1906. Proc. Conf. C. U. S. L., Aug. 22-25, 1906, p. 40, 30 Am. Bar Ass'n. Rep. 243.

[4]A pamphlet of 24 pages (numbered from 13 to 36 inclusive) entitled "Second Tentative Draft of an Act to Make Uniform the Law of Partnership." It is reprinted under the caption "Draft A" in the pamphlet described in footnote 11. It contains brief notes indicating which of the sections are taken from the British Partnership Act, 1890, and which are new. It is undated, but was prepared and printed prior to the meeting of the commissioners in August, 1909. Proc. Conf. C. U. S. L., Aug. 19-23, 1909, p. 114, 34 Am. Bar Ass'n. Rep. 1083.

[5]In 1903 Mr. Ames agreed to draft an act for the committee on commercial law. 26 Am. Bar Ass'n. Rep. 501 (1903). In 1905 he addressed the conference of commissioners and requested instructions. 28 Am. Bar Ass'n. Rep. 732-738 (1905).

[6]§§ 1 and 4 vesting "the legal title" to partnership property in the "firm", and providing for actions by and against the firm in the firm name; § 5 requiring the registration of the firm name; and § 12 providing for the enforcement of the contributory obligation of the partners in respect of the obligations of the firm.

[7]Proc. Conf. C. U. S. L., Aug 22-25, 1906, p. 40, 30 Am. Bar Ass'n. Rep. 243; Proc. Conf. C. U. S. L., Aug. 22-24, 1907, p. 93, 31 Am. Bar Ass'n. Rep. 1212; Proc. Conf. C. U. S. L., Aug. 21-24, 1908, p. 102, 33 Am. Bar Ass'n. Rep. 1048.

[8]Proc. Conf. C. U. S. L., Aug. 21-24, 1908, p. 37, 33 Am. Bar Ass'n. Rep. 983. As to this difficulty, see J. A. Crane, The Uniform Partnership Act, A Criticism, 28 Harvard Law Rev. 762, 778-779 (1915); W. D. Lewis, The Uniform Partnership Act—A Reply to Mr. Crane's Criticism, 29 *id.* 158, 164-165 (1915).

[9]Proc. Conf. C. U. S. L., Aug. 19-23, 1909, pp. 112-114, 34 Am. Bar Ass'n. Rep. 1081.

Lewis and James B. Lichtenberger prepared in 1910[10] the *third* and *fourth* drafts,[11] the former a revision of the *second*, and the latter a departure. These drafts were much discussed before the committee on commercial law,[12] with the upshot that the *fourth* was adopted as the basis for further work.[13] The *fifth* draft, an elaborate revision of the *fourth*, followed in 1911.[14] It consisted of 52 sections, the substance of all of which except six[15] appears in the Uniform Partnership Act as recommended. The *fifth* draft is fully annotated by its draftsmen, notes the sections which have and those which have not correspondence with sections of the British Partnership Act, 1890, compares the sections with those of the preceding drafts, and indicates the intended departures from existing law. Not infrequently its fuller notes are more valuable than those appearing in the current edition of the Act published by the Commissioners.[16] This draft was discussed at the 1911 conference of the Commissioners[17] and some months later at a meeting of the committee on commercial law.[18] A new draft, the *sixth*,[19] omitting two sections of the old,[20] adding another,[21] and occasionally changing the phraseology was then prepared and recommended for approval to the conference of 1912,[22] which devoted three

[10]Proc. Conf. C. U. S. L., Aug. 25-29, 1910, p. 142.

[11]These drafts are printed in a pamphlet of 113 pages, entitled "Tentative Drafts of an Act to Make Uniform the Law of Partnership." The *third* draft is referred to as "Draft B", the *fourth*, as "Draft C." The *second* draft is reprinted under the caption "Draft A". The British Partnership Act, 1890, is also appended. "Draft C" is fully annotated.

[12]Two meetings of the committee on commercial law were held—one towards the end of August, 1910, the other on Feb. 3 and 4, 1911—at which the *third* and *fourth* drafts were considered. Many persons interested and especially well informed as to partnership law were in attendance at the second meeting. The stenographer's minutes cover 306 typed pages. Parts of some of the speeches at each meeting are printed in a pamphlet entitled "Reprint of Discussions before the Committee on Commercial Law of the Conference on Uniform State Laws *in Re* the Theory on which an Act to Make Uniform the Law of Partnership Should Be Drawn."

[13]Proc. Conf. C. U. S. L., Aug. 23-28, 1911, p. 149, 36 Am. Bar Ass'n. Rep. 923.

[14]It is a pamphlet of 75 pages entitled "Draft of an Act to Make Uniform the Law of Partnership." Prefixed is a letter of transmittal, dated July 1, 1911.

[15]§ 21 (exemption from liability to third persons by notice); § 22 (fraudulent conveyances); § 23 (continuing guaranties); § 28 (partner engaging in competing business); §§ 51, 52 (process and procedure in actions by and against partners).

[16]See footnote 27, *infra*.

[17]Proc. Conf. C. U. S. L., Aug. 23-28, 1911, pp. 37-43, 36 Am. Bar Ass'n. Rep. 823-827.

[18]Proc. Conf. C. U. S. L., Aug. 21-26, 1912, p. 123, 37 Am. Bar Ass'n. Rep. 1141.

[19]A pamphlet entitled "Sixth Tentative Draft of an Act to Make Uniform the Law of Partnership", dated May 4, 1912.

[20]§§ 21, 23.

[21]§ 49, relating to infant partners.

[22]Proc. Conf. C. U. S. L., Aug. 21-26, 1912, p. 123, 37 Am. Bar Ass'n. Rep. 1141.

sessions to a discussion of it.[23] After consideration of the suggestions of the conference the *seventh* draft,[24] in form and substance the same as the *sixth,* was submitted by the committee on commercial law to the conference of 1913. Again two sessions were devoted to the act and again it was recommitted to the committee.[25] The *eighth* and final draft followed in 1914. It omitted four sections previously included.[26] Otherwise it is merely a careful revision as to style of the *seventh* draft. It was with unimportant amendments adopted by the Commissioners and recommended to the states.[27] The Act has been adopted in Alaska,[28] Illinois,[29] Maryland,[30] Michigan,[31] Pennsylvania,[32] Tennessee,[33] Wisconsin,[34] and Wyoming.[35] Valuable discussion of the Act is to be found in recent periodicals.[36]

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[23]Proc. Conf. C. U. S. L., Aug. 21-26, 1912, pp. 39, 43, 64; 37 Am. Bar Ass'n. Rep. 1056, 1060, 1081.

[24]A pamphlet entitled "Seventh Tentative Draft of an Act to Make Uniform the Law of Partnership", dated June 10, 1913.

[25]Proc. Conf. C. U. S. L., Aug. 26-30, 1913, pp. 39, 51, 38 Am. Bar Ass'n. Rep. 981.

[26]§§ 22, 28, 51, 52 referred to in footnote 15, *supra,* and § 49 referred to in footnote 21, *supra.*

[27]Proc. Conf. C. U. S. L., Oct. 14-19, 1914, pp. 30-31, 64-65. The Act as adopted is printed in the proceedings. *Id.* pp. 285-306. Subsequently the act with full annotations was published by the commissioners in a pamphlet entitled "The Uniform Partnership Act", dated Oct. 14, 1914. There are *at least* two subsequent editions of this pamphlet. The first of these corrects erroneous cross-references in § 31 (6) and § 40 (d) and contains an amendment to § 41 (1). The second incorporated the amendment to § 35, the necessity for which was pointed out by J. A. Crane. The Uniform Partnership Act, A Criticism, 28 Harvard Law Rev. 762, 784 (1915); W. D. Lewis, The Uniform Partnership Act—A Reply to Mr. Crane's Criticism, 29 *id.* 291, 311-312 (1916). In this edition the first paragraph of § 36 is omitted by mistake. See pp. 60, 62. There is nothing in the title or general appearance of these three editions to distinguish one from the other. The introductory note prefixed to the pamphlet is inaccurate in detail. Its references to the proceedings are inadequate and sometimes erroneous, and its references to the various drafts are confusing. The date 1909 in the second paragraph of page 3 should read 1906. There were two meetings separated by five months, to consider the *second, third* and *fourth* drafts, and not one as stated in the first full paragraph of page 4. See footnote 12, *supra.*

[28]Laws of 1917, c. 69.

[29]Laws of 1917, p. 624.

[30]Laws of 1916, c. 175.

[31]Laws of 1917, No. 72.

[32]Laws of 1915, No. 15; and Laws of 1917, No. 42.

[33]Laws of 1917, c. 140.

[34]Laws of 1915, c. 358.

[35]Laws of 1917, c. 97.

[36]W. D. Lewis: The Desirability of Expressing the Law of Partnership in Statutory Form, 60 U. of P. Law Rev. 93, (1911); The Uniform Partnership Act, 24 Yale Law Journal 617 (1915); The Uniform Partnership Act, 72 Legal Intelligencer 110, Feb. 12, 1915; The Uniform Partnership Act—A Reply to Mr. Crane's Criticism, 29 Harvard Law Rev. 158, 291 (1915-16). J. A. Crane: The Uniform Partnership Act, A Criticism, 28 *id.* 762 (1915); The Uniform Partnership Act and Legal Persons, 29 *id.* 838

The Act's definition of a partnership[37] is as satisfactory as any which has been offered, and in view of the usual tenor of judicial definitions is probably better for a statute than one drafted frankly as a mere description of the common attributes of voluntary associations of several in a business as *co-entrepreneurs*, and not as co-capitalists or co-wage-earners. The following section[38] repudiates the doctrine of "partnership as to third persons", which still obtains in New York and one or two other states.[39] The obligation of one estopped to deny that he is a partner and his power to act for his ostensible partner, are dealt with in such a way as to dissipate some existing doubts.[40]

The power of a partner to subject his co-partners to obligations and to convey partnership assets is so defined as to permit the execution by him of sealed instruments.[41] The definition also serves in respect of other points to relieve the practitioner of much unprofitable search for old cases of uncertain bearing.[42]

The obligations of the partners, except for torts and breaches of trust, are declared to be joint;[43] but the estate of a deceased partner

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(1916). J. B. Lichtenberger, The Uniform Partnership Act, 63 U. of P. Law Rev. 639 (1915). S. Williston, The Uniform Partnership Act, with Some Remarks on Other Uniform Commercial Laws, 63 U. of P. Law Rev. 196 (1915); J. H. Drake, Partnership Entity and Tenancy in Partnership: The Struggle for a Definition, 15 Michigan Law Rev. 609 (1917); E. B. Seymour, The Uniform Partnership Act, an Appreciation, 72 Legal Intelligencer, Feb. 19, 1915.

The third edition of F. M. Burdick's, Partnership (1917), cites the Act throughout, pointing out its effect.

[37] § 6 (1). The present law of New York. Evans *v.* Warner (1897) 20 App. Div. 230, 235, 47 N. Y. Supp. 16; N. Y. Con. Laws, c. 39, § 2. But see footnote 39, *infra.*

[38] § 7 (1).

[39] Leggett *v.* Hyde (1874) 58 N. Y. 272; Burdick, Partnership (3d ed. 1917) pp. 50-58.

[40] § 16. Thus under § 16 (1) it would be clear that the doctrine of Poillon *v.* Secor (1865) 61 N. Y. 456, long-recognized as unsound, but neither followed nor overruled, is not law. The section would also make certain that inaction after knowledge that one has been held out as a partner is not of itself a sufficient basis for an estoppel. Consent to the holding out must be found as a fact. There are no decisions on the point in New York.

[41] § 9 (1). This would probably effect a desirable change in the law of New York. Smith *v.* Kerr (1849) 3 N. Y. 144. What is more important, the sub-division would fix a rule upon a simple point as to which there ought to be no doubt. For an instance of the present confusion, see Keller *v.* West (1886) 39 Hun. 348, 353.

[42] *E. g.*, § 9 (3d), (3e), state the present law of New York that a partner does not have the power to confess judgment on claims against the partners, nor to submit them to arbitration. However, if they were adopted, excursions into Abbott's Practice Reports and Howard's Practice Reports would not be so frequently necessary.

[43] §§ 13, 14, 15. The present law of New York. Seligman *v.* Friedlander (1910) 199 N. Y. 373, 92 N. E. 1047. These sections, however, would be a distinct gain since they would of themselves repeal §§ 6, 36, c. 39, N. Y. Con. Laws, stating in terms that partners are jointly and severally liable. See F. M. Burdick, Joint and Several Liability of Partners, 11 Columbia Law Rev. 101 (1911).

is liable for partnership obligations if the partnership assets are insufficient.[44]

By the Act the constituent legal and equitable rights, powers, privileges and immunities of the aggregate called the property in the land, chattels and *choses in action* conveyed to the partners and agreed between them to be subject to the hazards of their business, are distributed among and divided between the partners. No partner has the privilege of sole enjoyment of partnership lands, chattels, *etc.*,[45] though each has the privilege of possessing them.[46] The power to alienate the firm assets for a purpose beyond the scope of the firm business is divided between all the partners, *i. e.*, must be exercised by the joint act of all,[47] but each partner has the power of alienation for a purpose within the apparent scope of the business.[48] The liability of firm assets to involuntary alienation is confined to judicial process issued to enforce claims against all the partners.[49] Excepting his right to receive the profits and to receive the value of his share of the surplus upon winding up,[50] a partner cannot convey his rights, powers and privileges in respect of the assets.[51] Nor, excepting his right to the profits and surplus, are his rights, *etc.*, in the assets subject to legal process issued to enforce his separate debts.[52] A partner's right to profits and surplus may be voluntarily alienated by him,[53] and may also be taken under legal process against him,[54] but the process is by a charging order,[55] the operation of which is similar to that of an order reaching equitable assets in proceedings supplementary to judgment under the New York Code.[56] All of a partner's rights, *etc.*, in partnership assets—land as well as chattels—except his right to profits and surplus, survive upon

[44]§ 36 (4). The present law in New York. Voorhis *v.* Child (1858) 17 N. Y. 354; Code Civ. Proc. § 758.

[45]§ 25 (2a); see also § 38 (1). The present law of New York. See footnote 61, *infra.*

[46]§ 25 (2a). The present law of New York.

[47]§ 25 (2b). The present law of New York.

[48]§§ 9, 10. The present law of New York, except as to real property conveyed to the partners in the firm name as authorized by § 8. Such property may under § 10 (1) be alienated by the deed of any partner executed in the firm name, if the conveyance is within the apparent scope of the firm business.

[49]§ 25 (2c). See footnote 52, *infra,* as to effect on the law of New York.

[50]§§ 26, 27, 38. This right a partner may assign under the present law of New York.

[51]§ 25 (2b). The present law of New York. Menagh *v.* Whitwell (1873) 52 N. Y. 146.

[52]§ 25 (2c). This would effect a very desirable change in the law of New York which permits a levy on the assets in such a case, Smith *v.* Orser (1870) 42 N. Y. 132, but forbids a sale, except of the partner's right to profits and surplus. Michalover *v.* Moses (1897) 19 App. Div. 343, 46 N. Y. Supp. 456. See Code Civ. Proc. §§ 1413-14. The sale of the partner's right to profits and surplus will not be enjoined until the ascertainment of its value by an accounting. Moody *v.* Payne (N. Y. 1817) 2 John. Ch. 548.

[53]§ 27. The present law of New York.

[54]§ 28. The present law of New York. See footnote 52, *supra.*

[55]§ 28. A desirable change in New York law. See footnote 52, *supra*

[56]Code Civ. Proc. § 2432 *et seq.*

his death to the surviving partner.[57] The widow takes nothing by way of dower.[58] The deceased partner's right to profits and surplus passes to his personal representative for distribution.[59] An alienation, except upon death, of the right to profits and surplus does not operate as a dissolution.[60] Upon winding up, a partner has no right to receive any part of the assets—whether chattels or land—in specie, but has the right to have them sold and to receive the value of his share in money.[61]

The Act provides that when the partnership business is continued, by a partner, either alone or in partnership with third persons, without winding up or liquidation, after dissolution caused by the death or retirement of his co-partner, or by the admission of a third person as a partner, the assets of the new partnership shall be liable for the obligations of the dissolved firm as well as for the obligations of the new;[62] but of course no duty to pay the old obligations is imposed upon third persons unless they have contracted to pay them.[63] Similarly, if all the partners convey all their rights, *etc.*, in the firm assets to third persons who contract to pay the firm obligations and continue the business of the dissolved partnership, in addition to the contractual duty to pay, the Act subjects the assets of the persons continuing the business to a liability for the payment of obligations of the dissolved firm.[64] If, however, the partners convey to third persons who do not assume the obligations of the dissolved firm, the Act imposes upon the third persons and their assets neither duty nor liability. In such a case, the creditors of the dissolved firm are left to their rights against the partners and to their powers over the assets conveyed, under the statutes and com-

[57] § 25 (2d). The present law of New York, except that under § 25 (2d) if the partners are co-tenants of a legal estate in land, the "legal title" survives to the surviving partner, and does not descend to the heirs of the deceased "in trust" for the surviving partner, as at present. Delmonico *v.* Guillaume (N. Y. 1845) 2 Sand. Ch. 366. This would be a wise change in the interest of expedition and simplicity.

[58] § 25 (2e). The present law of New York as to inchoate dower. Hauptmann *v.* Hauptmann (1904) 91 App. Div. 197, 86 N. Y. Supp. 427. See footnote 59, *infra.*

[59] § 26 (last clause). The present law of New York except as to land. At present the widow and heirs, and not the personal representative, are entitled to such partnership real property as it is not necessary to sell to pay creditors and to adjust the claims of the partners. Darrow *v.* Calkins (1897) 154 N. Y. 503, 49 N. E. 61.

[60] §§ 27, 28. These sections settle in a desirable way a point of doubt. Probably, under the existing law of New York a dissolution would be effected by such an alienation. Marquand *v.* N. Y. Mfg. Co. (N. Y. 1820) 17 Johns. 525.

[61] § 38 (1). This section would probably change the law of New York as to real property. See 30 Cyc. 665-666. *Cf.* footnote 59, *supra.*

[62] §§ 41 (1-3), (5-6), 17. This would effect a change in the law of New York. At present under such circumstances the assets of the new firm—even such of them as were assets of the old—are not subjected to a liability for obligations of the dissolved partnership. Service *v.* McDonnell (1887) 107 N. Y. 260, 14 N. E. 314.

[63] §§ 41 (7), 17. The present law of New York. Flour City Nat'l. Bank *v.* Widener (1900) 163 N. Y. 276, 57 N. E. 471.

[64] § 41 (4). This would effect a change in the law of New York similar to that stated in footnote 62, *supra.* See Stanton *v.* Westover (1886) 101 N. Y. 265, 4 N. E. 529.

mon law as to conveyances in fraud of creditors.[65] For the further protection of creditors of the dissolved firm, in all of the above cases they are given a priority over separate creditors of the partners with respect to claims[66] of the partners for the consideration for the conveyance of the assets.[67]

The sections of the Act dealing with dissolution contain several provisions of especial interest. Dissolution of a partnership for a fixed term may be caused at any time by the will of any one of the partners.[68] But the other partners are privileged to continue the business with the partnership assets, upon giving a bond to pay him the value at that time of his right to profits and surplus—less the damages resulting from his breach of contract—and to indemnify him against existing and future obligations.[69] Notice of dissolution is necessary in case of dissolution by death, or bankruptcy.[70] An "active" dormant partner, in the absence of notice of dissolution, continues chargeable as a partner.[71] A partner's right to an account is declared to accrue at the date of dissolution, in the absence of agreement to the contrary, and the running of the Statute of Limitations would accordingly begin at that date.[72]

In formulating the rules for judicial distribution of partnership and separate assets among the firm and separate creditors, the exceptional case where there are no firm assets and no living solvent partner is not provided for, with the result that even in that case the power of the separate creditors to subject the separate assets to the payment of their claims has priority over that of the firm creditors.[73] This is an adoption of the present rule under the Bankruptcy Act.[74] By the same section, a solvent partner who has satisfied all the partnership obligations and liabilities, is postponed to the other separate creditors in the distribution of the insolvent partner's assets.[75]

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[65] § 41 (9). There is no section in the Act providing for fraudulent conveyances. A section on the subject was omitted in view of the commissioners' plan to propose a uniform act covering the whole field. W. D. Lewis, The Uniform Partnership Act—a Reply to Mr. Crane's Criticism, 29 Harvard Law Rev. 291, 297 (1916).

[66] § 42.

[67] §§ 41 (8), 42. Such priority would be new in the law of New York.

[68] § 31 (2). This would settle a point in the law of New York on which there is almost no authority, Ferrero *v.* Buhlmeyer (1867) 34 How. Pr. 33, in accordance with the general rule in this country. 30 Cyc. 651.

[69] § 38 (2b).

[70] §§ 34 (b), 35 (1b). In such cases a notice is not now required. Dexter *v.* Dexter (1899) 43 App. Div. 268, 60 N. Y. Supp. 371. The adoption of the section would result in an improvement.

[71] § 35 (2b). The present law of New York. Elmira, *etc.*, Co. *v.* Harris (1891) 124 N. Y. 280, 26 N. E. 541.

[72] § 43. This section would make certain a point upon which the New York cases are far from clear. See Gray *v.* Green (1891) 125 N. Y. 203, 26 N. E. 253, s. c. (1894) 142 N. Y. 316, 37 N. E. 124; Gilmore *v. Ham* (1894) 142 N. Y. 1, 36 N. E. 826.

[73] § 40 (h).

[74] Farmers' & Mechanics' Nat'l. Bank *v.* Ridge Avenue Bank (1916) 240 U. S. 498, 36 Sup. Ct. 461.

[75] § 40 (i). This section would settle a point upon which the little authority in New York is conflicting. To the effect that the solvent partner is postponed is Kirby *v.* Carpenter (N. Y. 1849) 7 Barb. 373. Payne *v.* Matthews (N. Y. 1836) 6 Paige 19 is *contra.*

A careful study of the Act convinces one that many more ghosts would be laid by it than are likely to be raised. The doctrine of "partnership as to third persons" would be swept away. The law as to partnership property would be intelligibly stated and very much simplified. The duties of persons continuing the firm business after dissolution but without winding up or liquidation, are so defined as to greatly improve the existing law. On the whole there can be little doubt that the adoption of the Act would be a long step forward in the development of the law of partnership in New York.

U. M.

THE DOCTRINE OF CONTINUOUS VOYAGE AS APPLIED TO CONTRABAND.—Perhaps the most perplexing problem which Great Britain has had to solve in her effort to effect the "economic strangulation" of Germany is to prevent the flow of supplies through adjacent neutral countries; but an effective weapon in the hands of her prize courts has been the so-called doctrine of "continuous voyage", or, perhaps more accurately, of "ultimate destination". It is a fundamental principle of international law that *bona fide* commerce between neutrals may not be interfered with;[1] likewise, neutrals may trade freely with belligerents, subject only to the belligerent rights of blockade and stoppage of contraband.[2] However, merchants engaged in evading the rules of blockade and contraband often resort to clever subterfuges to give their traffic the appearance of *bona fide* neutral trade, a common device being a colorable importation into a neutral country from which transshipment to the actual destination can more easily be effected. It is to defeat such ruses that the doctrine of "continuous voyage" is invoked by belligerent prize courts.[3] The doctrine consists, not in applying a fiction, but in unmasking a fiction; in hacking through a net work of shams to the *bona fides* of a transaction.[4]

What elements must concur to constitute a shipment a "continuous" transportation is often difficult to determine. The generally accepted test is, whether the goods were intended for incorporation into the common stock of the neutral country.[5] Sir Edward Grey,

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[1]See The Dolphin (D. C. 1863) 7 Fed. Cas. 3,975 at p. 869; American note to Great Britain of Dec. 26, 1914, 9 Am. Jour. Int. Law, Special Supp. 56, and British reply of Jan. 7, 1915, *ibid.* 60. Compare the extreme view of belligerent rights as stated by Prince Bismarck, *ibid.* 80; see The Bermuda (1865) 70 U. S. 514, 551-552.

[2]7 Moore, Digest § 1179; see: article by James Brown Scott, 8 Am. Jour. Int. Law 302-5; The Peterhoff (1866) 72 U. S. 28, 56; The Bermuda, *loc. cit.*; opinion of Marshall, C. J., in The Commercen (1816) 14 U. S. 382, 399; American note to Great Britain of March 30, 1915, 9 Am. Jour. Int. Law, Special Supp. 117.

[3]For the origin and development of the doctrine, see 7 Moore, *op. cit.* §§ 1180, 1255-1263; Naval War College, Int. Law Situations, 1901, 41-85; Naval War College, Int. Law Topics and Discussions, 1905, 77-106.

[4]"When the truth is discovered, it is according to the truth, and not according to the fiction, that the question is to be determined." The Dolphin, *loc. cit.*; see The William (1806) 5 C. Rob. 385, 391-397; The Bermuda, *supra,* at p. 555; The Commercen, *supra,* at p. 392.

[5]See The Bermuda, *supra,* at pp. 551-552; The Peterhoff, *supra,* at p. 59; The Springbok (1866) 72 U. S. 1, 25; The Kim (1915) 3 Lloyd's Prize Cases 167, 359, 32 T. L. R. 10. The practical application of this test in Lord Stowell's time is illustrated in The Maria (1805) 5 C. Rob. 365; The Thomyris (1808) Edward's Admiralty 17; The William, *supra*; and The Polly (1800) 2 C. Rob. 361.